

# NORTH CAROLINA GENERAL ASSEMBLY



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## HOUSE SELECT COMMITTEE ON THE CERTIFICATE OF NEED PROCESS AND RELATED HOSPITAL ISSUES

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REPORT TO THE  
2012 SESSION  
of the  
2011 GENERAL ASSEMBLY

APRIL 2012

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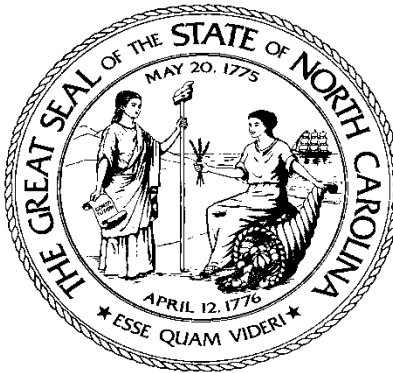
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# TRANSMITTAL LETTER

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STATE OF NORTH CAROLINA

HOUSE SELECT COMMITTEE ON THE CERTIFICATE OF NEED  
PROCESS AND RELATED HOSPITAL ISSUES



April 19, 2012

TO THE MEMBERS OF THE 2012 HOUSE OF REPRESENTATIVES:

Attached for your consideration is the interim report of the House Select Committee on the Certificate of Need Process and Related Hospital Issues established by the Speaker of the House of Representatives pursuant to G.S. 120-19.6(a1) and Rule 26 of the Rules of the House of Representatives of the 2011 General Assembly.

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Respectfully submitted,

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Representative Fred Steen  
Co-Chair

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Representative John Torbett  
Co-Chair

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# COMMITTEE AUTHORIZATION

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Office of Speaker Thom Tillis  
North Carolina House of Representatives  
Raleigh, North Carolina 27601-1096

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## HOUSE SELECT COMMITTEE ON THE CERTIFICATE OF NEED PROCESS AND RELATED HOSPITAL ISSUES.

### TO THE HONORABLE MEMBERS OF THE NORTH CAROLINA HOUSE OF REPRESENTATIVES

**Section 1.** The House Select Committee on the Certificate of Need Process and Related Hospital Issues (hereinafter "Committee") is established by the Speaker of the House of Representatives pursuant to G.S. 120-19.6(a1) and Rule 26 of the Rules of the House of Representatives of the 2011 General Assembly.

**Section 2.** The Committee consists of the 11 members listed below, appointed by the Speaker of the House of Representatives. Members serve at the pleasure of the Speaker of the House of Representatives. The Speaker of the House of Representatives may dissolve the Committee at any time.

Representative Fred Steen, Co-Chair
Representative John Torbett, Co-Chair
Representative Jamie Boles
Representative Mark Hollo
Representative Bill Current
Representative Marilyn Avila
Representative Jeff Collins
Representative Shirley Randleman
Representative Rick Glazier
Representative Martha Alexander
Representative Marcus Brandon

**Section 3.** The Committee may study all of the following:

- (1) The provisions of House Bill 743, First Edition, 2011 Regular Session and House Bill 812, First Edition, 2011 Regular Session.
- (2) The legal requirements and process governing Department of Health and Human Services determinations on applications for CON, including an analysis

of exceptions granted under policy AC-3 of the State Medical Facilities Plan as implemented by the Department of Health and Human Services.

- (3) Issues relating to publicly owned hospitals, including determining the appropriate role of State-owned hospitals and the appropriate manner for public hospital authorities created under G.S. 131E-17 to operate beyond the boundaries of the local government that created the authority.
- (4) Whether a hospital operating under a Certificate of Public Advantage should be required to comply with the same rules, policies, and limitations to each county in which it operates.
- (5) The extent to which a publicly owned hospital should engage in business with an entity having a Certificate of Public Advantage or operating under an exemption under the CON laws of the State.
- (6) Any other matter reasonably related to subdivisions (1) through (4) of this section, in the discretion of the Committee.

**Section 4.** The Committee shall meet upon the call of its Co-Chairs. A quorum of the Committee shall be a majority of its members.

**Section 5.** The Committee, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and Article 5A of Chapter 120 of the General Statutes.

**Section 6.** Members of the Committee shall receive per diem, subsistence, and travel allowance as provided in G.S. 120-3.1.

**Section 7.** The expenses of the Committee including per diem, subsistence, travel allowances for Committee members, and contracts for professional or consultant services shall be paid upon the written approval of the Speaker of the House of Representatives pursuant to G.S. 120-32.02(c) and G.S. 120-35 from funds available to the House of Representatives for its operations.

**Section 8.** The Legislative Services Officer shall assign professional and clerical staff to assist the Committee in its work. The Director of Legislative Assistants of the House of Representatives shall assign clerical support staff to the Committee.

**Section 9.** The Committee may submit an interim report on the results of the study, including any proposed legislation, on or before May 1, 2012, by filing a copy of the report with the Office of the Speaker of the House of Representatives, the House Principal Clerk, and the Legislative Library. The Committee shall submit a final report on the results of its study, including any proposed legislation, to the members of the House of Representatives prior to the convening of the 2013 General Assembly by filing the final report with the Office of the Speaker of the House of Representatives, the House Principal Clerk, and the Legislative Library. The Committee terminates upon the convening of the 2013 General Assembly or upon the filing of its final report, whichever occurs first.

Effective this the 24<sup>th</sup> day of August, 2011

Thom Tillis  
Speaker

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## COMMITTEE MEMBERSHIP

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## PREFACE

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The development of health care facilities and provision of health care services in North Carolina has been subject to State-level regulation and determinations of need since the late 1970's. This health care planning process seeks to ensure that rural areas and underserved populations have adequate access to health care; to encourage safety and high quality in the health care services provided; and to reduce health care costs through the elimination of unnecessarily duplicative expensive facilities, equipment, and services. To accomplish these goals, the statutes require the development of annual projections of need for various types of health care facilities and services.<sup>1</sup> The resulting document is known as the State Medical Facilities Plan (SMFP). To implement the SMFP, the General Assembly enacted the Certificate of Need Law,<sup>2</sup> which provides the process by which persons may apply for a license to construct or expand health care facilities or to provide services in accordance with the determined need.

In addition to the SMFP and the CON law, the State has also taken steps to enhance the availability of quality health care services by allowing hospitals and other persons to enter into cooperative agreements for the provision of health care that would otherwise be subject to State antitrust scrutiny.<sup>3</sup> Such agreements are subject to the issuance, by the State, of a Certificate of Public Advantage (COPA). The COPA spells out conditions of operation on the parties to the agreement that, in theory, should counterbalance any competitive advantage gained in the health care marketplace under the cooperative agreement. Only one COPA has issued since the enactment of the statute in 1993.

Although the Certificate of Need law has been amended several times since enacted, it has been a number of years since the General Assembly undertook a serious review of the program.<sup>4</sup> Further, there is concern that our certificate of public advantage law has not adequately offset the competitive advantage gained under the cooperative agreement, and it is unclear if Article 9A provides a definitive process to initiate the termination of an agreement.

The House Select Committee on the Certificate of Need Process and Related Hospital Issues was created and charged with the review of the State health planning process, including the State's CON program and the implementation of the COPA law, to determine whether these programs are adequately serving their intended purpose of ensuring the availability of quality, cost effective health care services to North Carolina citizens. The Committee began its work in September of 2011, and after soliciting input from citizens in all regions of the State, has determined, based on the depth and complexity of the information received, further examination is warranted prior to any action.

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<sup>1</sup> G.S. 131E-177

<sup>2</sup> Article 9, Chapter 131E of the General Statutes

<sup>3</sup> Article 9A, Chapter 131E of the General Statutes.

<sup>4</sup> 1991, Legislative Research Commission: Committee on Care Provided by Rest Homes, Intermediate Care Facilities, and Skilled Nursing Homes; Necessity for Certificates of Need; and Continuing Care Issues.



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## COMMITTEE PROCEEDINGS

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Below is a brief summary of the Committee's proceedings. A more detailed record of the Committee's work can be found in the Committee's notebook, located in the Legislative Library.

### September 14, 2011

The House Select Committee on the Certificate of Need Process and Related Hospital Issues met Wednesday, September 14, 2011, in Room 544 of the Legislative Office Building at 10:00 a.m. Shawn Parker, Committee Counsel, was called upon to present the Committee Charge. Committee Counsel Barbara Riley, Amy Jo Johnson, and Jan Paul, gave an overview of the North Carolina Certificate of Need Law. This presentation included an explanation of the North Carolina State Health Coordinating Council, the State Medical Facilities Plan, and the State Health Planning Process. Also discussed were facilities, services, and equipment subject to the Certificate of Need laws, the application process, and the process by which to appeal a decision regarding Certificate of Need. Following the presentation on Certificate of Need, Shawn Parker gave an overview regarding Certificate of Public Advantage, including its purpose, the legislative history, and the application process. At this time, there is only one Certificate of Public Advantage in the State and Mr. Parker reviewed the details of Mission Health System's Certificate of Public Advantage. The Committee engaged in discussion and requested additional information be provided at the next meeting.

### October 6, 2011

The House Select Committee on the Certificate of Need Process and Related Hospital Issues met Thursday, October 6, 2011, in Room 544 of the Legislative Office Building at 10:00 am. The Chair recognized Shawn Parker, Committee Counsel, to go over the Committee charge and address questions remaining from the previous meeting. Drexel Pratt, Director, Division of Health Service Regulation, Department of Health and Human Services, spoke briefly on State Medical Facilities Plan Policy AC-3, which allows Academic Medical Center Teaching Hospitals to request additional capacity and equipment to address educational and academic research needs, even if the State Medical Facilities Plan indicates "no need determination" based on the projected need for the general population. Mr. Pratt indicated that the upcoming 2012 State Facilities Medical Plan would include compromise language surrounding AC-3 due to the Hospital Association's work with stakeholders, and he explained the compromise language. Jeff Horton, Chief Operating Officer, Division of Health Service Regulation, Department of Health and Human Services, gave an overview and inventory of facilities regulated by the Certificate of Needlaw, as well as a review of the Certificate of Need application and appeal process. Mr. Horton also provided various statistics surrounding Certificate of Need in North Carolina.

The Committee next heard from Hugh Tilson, Senior Vice President, North Carolina Hospital Association. Mr. Tilson explained the economics of health care and the challenges facing hospitals in the State. The final presentation was given by Noah Huffstetler III, Attorney and Partner at

Nelson Mullins, Riley, Scarborough, LLP. Mr. Huffstetler discussed Certificate of Need regulation from a legal practitioner's point of view, including areas in which the Certificate of Need law presents opportunities for improvement.

### **October 20, 2011**

The House Select Committee on the Certificate of Need Process and Related Hospital Issues met Thursday, October 20, 2011, in the Boone Building at the WNC Agricultural Center in Fletcher, North Carolina, at 6:00 p.m. Shawn Parker, Committee Counsel, gave a brief overview of the Committee's charge. The Committee heard two presentations regarding Certificate of Public Advantage. The first presentation was made by the following individuals: Dr. Ron Paulus, Chief Executive Officer, Mission Health System; Richard Vinroot, Legal Counsel, Mission Health System; Dr. Tom McCarthy, Economist; and Brandon Sutherland, Senior Manager, Dixon Hughes Goodman LLP. This presentation entailed a description of Mission's experience with its Certificate of Public Advantage, the effectiveness of the Certificate of Public Advantage on the hospital's performance, and a request that Mission be released from the Certificate of Public Advantage in the future.

The second presentation was made by the following individuals: Jim Bunch, President and Chief Executive Officer, Park Ridge Hospital; Graham Fields, Assistant to the President for External Relations, Park Ridge Hospital; Dr. Brian Quaranta, Physician, 21<sup>st</sup> Century Oncology; Gail Cummings, Regional Administrator, 21<sup>st</sup> Century Oncology; and Dr. Nathan Williams, Physician and Coalition Member, Western North Carolina Community Healthcare Initiative. The speakers discussed areas in which the Certificate of Public Advantage would benefit from changes and requested further oversight of the Certificate of Public Advantage program. Following the presentations, the Chair recognized individuals from the public to address the Committee on issues related to Certificate of Need and Certificate of Public Advantage.

### **November 1, 2011**

The House Select Committee on the Certificate of Need Process and Related Hospital Issues met Thursday, November 1, 2011, in the Council Chamber of the Citizens Center in Mount Holly, North Carolina at 6:00 p.m. Shawn Parker, Committee Counsel, gave a brief overview of the Committee's charge. Darise D. Caldwell, President of Rowan Regional Medical Center, presented information regarding the AC-3 policy in the State Medical Facilities Plan and suggested further changes to that policy. Carol Lovin, President, Management Company, Carolina HealthCare System, then addressed the Committee. Ms. Lovin explained why the Certificate of Need process is beneficial and discussed the challenges facing the Certificate of Need regulations, including issues involving the application and appeals process, and the AC-3 policy. The final presentation was made by Doug Luckett, Acting Chief Executive Officer, CaroMont Health, and Maria Long, Executive Vice President and Chief Legal Officer, CaroMont Health. Mr. Luckett and Ms. Long detailed the positive aspects of the Certificate of Need regulations and discussed areas for improvement within the application and appeals process. Following the presentations, the Chair

recognized individuals from the public to address the Committee on issues related to Certificate of Need and Certificate of Public Advantage.

### **November 17, 2011**

The House Select Committee on the Certificate of Need Process and Related Hospital Issues met Tuesday, November 17, 2011, at Cape Fear Community College in Wilmington, North Carolina at 6:00 p.m. The first presentation was made to the Committee by Denise Mihal, President, Brunswick Novant Medical Center, regarding the benefits of Certificate of Need regulations to Novant Health's facilities. The Committee then heard from Dennis Coffey, Chief Financial Officer, Doshier Memorial Hospital, who spoke in support of Certificate of Need regulation and offered suggestions for improving the regulations, particularly with regard to smaller hospitals. The third presentation was made by the following individuals: Sue Collier, Vice President, University Health Systems of Eastern Carolina; Dr. Herbert Garrison, Vice President, Medical Affairs, Pitt County Memorial Hospital and Professor of Medicine, Department of Emergency Medicine, the Brody School of Medicine; and Dr. Brian Kuszyk, Chief of Staff, Department of Radiology, Pitt County Memorial Hospital. This presentation focused on the virtues of the AC-3 policy and the benefits this policy provides to the State. The final presentation was made by John Gizdic, Vice President of Strategic Services and Business Development, New Hanover Regional Medical Center, who spoke in support of the Certificate of Need process. He detailed the benefits that the Certificate of Need regulations have New Hanover Regional Medical Center's facilities. Following the presentations, the Chair recognized individuals from the public to address the Committee on issues related to Certificate of Need and Certificate of Public Advantage.

### **January 19, 2012**

The House Select Committee on the Certificate of Need Process and Related Hospital Issues met Thursday, January 19, 2012, in Room 544 of the Legislative Office Building at 10:00 a.m. Representative Torbett presided and briefly summarized the previous meetings held across the State. The Chair then recognized Amy Jo Johnson, Committee Counsel, to present topics for discussion regarding the Certificate of Need. The presentation included a chart containing issues and possible solutions that Research staff compiled from presentations heard by the Committee and comments from public (see minutes). The Chair opened the floor for discussion and Committee members made various changes and additions to the recommendations. Staff was directed to follow up on several questions raised by the Committee.

### **February 15, 2012**

The House Select Committee on the Certificate of Need Process and Related Hospital Issues met Wednesday, February 15, 2012, in Room 421 of the Legislative Office Building at 9:00 a.m. Shawn Parker, Committee Counsel, began with a review of the items pertaining to the Certificate of Public Advantage. The presentation was followed by extensive Committee discussion.

### **March 15, 2012**

The House Select Committee on the Certificate of Need Process and Related Hospital Issues met Thursday, March 15, 2012, in Room 544 of the Legislative Office Building at 10:00 am. The first presentation of the day was made by Jonathan Christenbury, M.D. regarding amending the Certificate of Need Law to allow ophthalmic procedure rooms in licensed health services facilities in order to improve patients' access and choice. Next the Committee continued discussions on possible recommendations regarding the Certificate of Need law. After lunch, citizens from Harnett County spoke on how the Certificate of Need law impacts health care, the economy, and overall well-being of their county. The speakers from Harnett County were: Pat Cameron, Good Hope Hospital; Jim Burgin, Harnett County Commissioner; Dr. Linda Robinson, Family Practitioner; and Patsy Carson, Mayor of Erwin. The Chair then opened the floor for discussion. At the end of the meeting, the Chair directed staff to start assembling a draft interim report for the Committee's consideration at a future meeting.

### **April 19, 2012**

The House Select Committee on the Certificate of Need Process and Related Hospital Issues met Thursday, April 19, 2012, in Room 544 of the Legislative Office Building at 10:00 am. The Committee discussed a draft of the interim report.

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## FINDINGS AND RECOMMENDATIONS

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Having clear and open processes enables stakeholders, as well as the public, to fully participate in programs and encourages more thorough oversight of the Certificate of Need and Certificate of Public Advantage programs. The Committee believes that maintaining the utmost integrity of these programs is vital. The Division of Health Service Regulation should continue to expand upon its procedures to create more expeditious and transparent processes within the Certificate of Need and Certificate of Public Advantage programs.

In order to effectuate the purpose of a Certificate of Public Advantage, which includes improving the quality of health care services, moderating health care costs, and expanding access to health services in underserved areas; the Committee finds that regulatory and judicial oversight of such agreements are necessary to ensure that the benefits of cooperative agreements outweigh the disadvantages and reduction in competition resulting from such agreements.

The Committee concludes that there is a need for more transparency and accountability by the State Health Coordinating Council relating to decisions it makes in the development of the State Medical Facilities Plan. The Committee finds that, while it is necessary for the State Health Coordinating Council members to have certain experience and expertise in the health care industry, there is concern about the public's perception of impropriety based on possible conflicts of interest and the potential of undue influence by a single individual based on the current appointing process. While exemptions to the need determination provisions of the North Carolina State Medical Facilities Plan may be necessary, fairness dictates that exemptions should be greatly limited so that all applicants of a particular type of health services are subject to the same requirements.

The Committee heard concerns that the specified capital expenditure amounts for certain projects and activities need to be adjusted based on inflation or necessity, and that Certificate of Need review and regulation is no longer needed for specified equipment acquisitions and services. The length and volume of appeals cause delays in the provision of needed facilities and/or services. It is in the best interest of the State that the Certificate of Need process be as expeditious as possible, that unnecessary delays be deterred, and that there should be an expedited process for appellate review in order to shorten the overall Certificate of Need determination process.

**The House Select Committee on the Certificate of Need Process and Related Hospital Issues shall continue its in-depth review of health care service regulation in North Carolina and shall, after prudent deliberation, recommend changes that are equitable and effective.**